IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 18989 of 2007(I)

AGAINST THE ORDER IN EP.479/05 IN OS.1293/1994 of II ADDL.SUB COURT,THRISSUR
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PETITIONER:

P.V.ASOKAN, S/O. PANDARAPARAMBIL VELAYUDHAN, PANDARAPARAMBIL HOUSE, P.O.NATTIKA.

BY ADV. SRI.T.M.CHANDRAN

RESPONDENTS:

THE CATHOLIC SYRIAN BANK LTD., NATTIKA. (NOW TRIPRAYAR BRANCH).

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 18989 OF 2007

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Dated this the 21st day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to quash the order of the learned Subordinate Judge in E.P.479/05 in O.S.1293/94. The decree is one for realisation of the amount due from the defendant, viz. the writ petitioner.

2. Heard counsel on either side. According to the decree holder he is a Conductor having a monthly income of RS.5,000/- and having properties worth about 3 lakhs and he is intentionally refusing to pay the amount. On the other hand, the judgment debtor would contend that he is not having any income and he is not deriving any income from the property and he has got only a fractional share in some of the properties even which is under attachment in execution of another decree. PW1 and RW1 were marked and the Court accepted the evidence of PW1 that the

judgment debtor is a Conductor. When the judgment debtor categorically denied that he is not having any income as a Conductor some more material evidence could have been adduced by the decree holder because the burden is squarely on the decree holder to prove the means of the judgment debtor. If a person is a Conductor at least he will have the badge to be possessed by the Conductor and a direction or request to produce such a document or to file an affidavit to that effect may throw some light regarding the avocation or genuineness of the claim put forth by him. It is not correct to simply rely upon the evidence of PW1 to find out the means when RW1 has also entered the box and controverted the same.

3. But, I feel this is a case where an opportunity shall be given to the decree holder to prove the means of the judgment debtor and therefore the order under challenge is set aside and both the parties are permitted to produce document or adduce evidence in support of their respective contentions and the Court can finally decide the matter after hearing both sides within a stipulated period of three months

from today. The parties are directed to appear before the executing Court on 24th July, 2007. Till the matter is finally disposed of the order of arrest shall remain suspended.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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